



**MONTANA STATE HOSPITAL
POLICY AND PROCEDURE**

**DISCHARGE OR CONDITIONAL RELEASE
FROM FORENSIC COMMITMENT**

Effective Date: January 25, 2016

Policy: FP-09

Page 1 of 10

- I. PURPOSE:** To clarify standards, responsibilities, and procedures for the discharge or conditional release of patients under forensic commitment to Montana State Hospital (MSH) for inpatient psychiatric examination, custody, care, and treatment.
- II. POLICY:**
- A. MSH promotes adherence to state and federal standards pertaining to the discharge or conditional release of patients residing at MSH on forensic commitments.
 - B. MSH promotes the provision of treatment in the least restrictive, least intrusive manner necessary to meet the patient's needs and promote community safety.
 - C. MSH Treatment Teams will regularly review forensic cases and assess their readiness for transfer, conditional release, or discharge.
 - D. Patients forensically committed to the Director of the Department of Public Health and Human Services (DPHHS) for custody, care, and treatment (GBMI, NGMI) have the opportunity to request reviews of their sentence or make application for conditional release or discharge according to state laws. MSH will not restrict a patient's independent petition for a review of sentence, conditional release, or discharge.
 - E. Licensed Independent Practitioners (LIP) will collaborate with the patient, guardian, family members, aftercare providers, and other Treatment Team members to develop a plan that meets the patient's needs for safety and recovery. They may also need to collaborate with or obtain approval from Department of Corrections Adult Probation and Parole officers, Board of Pardons and Parole officials, district court judges, or others prior to the discharge or conditional release of a patient under forensic commitment.
 - F. The LIP will consider a patient's mental status, diagnosis, needs, risk of harm to self, risk of harm to others, capacity for self-care, capacity to appreciate the criminality of their behavior, capacity to conform their behavior to the requirements of the law, and other statutory criteria in the determination of a patient's readiness for discharge or conditional release.

Montana State Hospital Policy and Procedure

DISCHARGE OR CONDITIONAL RELEASE FROM FORENSIC COMMITMENT

Page 2 of 10

- G. The LIP will refer the patient to appropriate facilities, agencies, aftercare providers, and other appropriate resources as indicated upon discharge or conditional release.
- H. If the patient does not have clothing suitable to the season, MSH will provide suitable clothing upon discharge or conditional release.
- I. The lack of a preferred community placement is not, in itself, a reason for continued hospitalization of a patient who can be treated in a less restricted, community-based setting. When aftercare placements preferred by patients, guardians, or family members are not available, arrangement may be made for an alternative that adequately meets the needs of the patient.
- J. District court judges may order the incarceration, transfer, discharge, or conditional release of a patient on a forensic commitment, independently of the LIP, patient, guardian, or treatment team's recommendation.
- K. At the end of a period of forensic commitment the LIP may file for an involuntary civil commitment if the patient meets criteria and requires additional inpatient psychiatric treatment. If the patient's commitment is not extended, the patient must be released. If appropriate, to meet the needs of the patient, the patient may sign a voluntary commitment to the hospital.
- L. MSH staff will follow the MEMORANDUM OF UNDERSTANDING BETWEEN MONTANA DEPARTMENT OF CORRECTIONS AND MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (Dated 10/29/2007) regarding the transfer, conditional release, and discharge of patients under forensic commitments.
- M. The MSH Director of Quality Improvement will maintain a quality assurance and performance improvement program designed to monitor the discharge and conditional release system. The results of intermittent studies of quality and performance will be reported to the Hospital Administrator.

III. DEFINITIONS:

- A. Forensic Commitment – The commitment of a person/defendant/patient to the Director of the Department of Health and Human Services for examination, custody, care, and treatment, according to criminal codes, including:
 - 1. Examination of defendant per §46-14-202 through 206, MCA
 - a. Referred to as Court-Ordered Examination (COE)
 - 2. Determination of fitness to proceed per §46-14-221 & 222, MCA
 - a. Referred to as Unfit to Proceed (UTP)
 - 3. Not guilty by reason of lack of mental state per §46-14-301 through 304, MCA
 - a. Referred to as Not Guilty by reason of Mental Illness (NGMI)

4. Consideration of mental disease or disorder or developmental disability in sentencing per 46-14-311, MCA
 - a. Referred to as Pre-Sentence Examination (PSE)
 5. Guilty but suffered from mental disease, mental disorder, or developmental disability per 46-14-312, MCA
 - a. Referred to as Guilty But Mentally Ill (GBMI)
- B. Discharge – The release of a patient from MSH and unconditional termination of a period of forensic commitment. This release terminates formal obligations MSH has towards the patient. Discharges may include:
1. Discharge to detention center
 2. Discharge to court
 3. Discharge to prison
 4. Discharge to community
 5. Discharge to community corrections program or supervision
- C. Conditional Release – The release of a patient from MSH, which is identical to a Discharge except that the patient is expected to meet conditions by the District Court, Board of Pardons and Parole officials, or Department of Corrections Adult Probation and Parole officers. The patient is subject to conditions designed to promote recovery, accountability, and safety. If the patient violates the conditions of release the District Court, Board of Pardons and Parole, or Department of Corrections Adult Probation and Parole may revoke the conditional release and order a higher level of care, including a return to MSH. Conditional release may include release to independent living, release to a community corrections program, or release to a community mental health program.
- D. Pre-Placement Visit (PPV) – A type of release from MSH designed to assess a patient’s readiness for release, which may lead to a discharge or conditional release. If the patient violates the conditions of the PPV, the patient may be returned to the hospital without any court hearings or involuntary civil commitment proceedings.
- E. Home Visit – Temporary leave from MSH for purpose of a home visit or potential aftercare placement visit, which is not a discharge or conditional release.
- F. Temporary Court Custody (TCC) – Temporary leave from MSH for a court-ordered proceeding, which is not a discharge or conditional release. However, the court may order a conditional release or discharge at such a proceeding.
- G. Forensic Review Board (FRB) – A five member board responsible for providing clinical and administrative review of treatment team decisions and recommendations (See policy FP-01 for additional information).

IV. RESPONSIBILITIES:

- A. LIP – Directs patient care, determines discharge and aftercare needs, assesses readiness for discharge or conditional release, consults with the FRB, provides reports or testimony to courts, orders discharge, orders conditional release, orders home visits, orders pre-placement visits, orders temporary court custody, makes appropriate notifications, makes appropriate warnings, and completes discharge summaries.
- B. Social Worker – Develops discharge or conditional release plans, obtains authorization for the release of confidential information, communicates with Department of Corrections officials, communicates with the Board of Pardons and Parole, communicates with attorneys, communicates with judges/courts, provides reports to courts, makes arrangements for appropriate aftercare services, documents aftercare plans, informs patients of discharge and aftercare plans, provides appropriate notifications, and implements discharge and aftercare plans.
- C. Discharge Technician – In collaboration with the social worker, verify that all discharge or conditional release procedures have been completed. Administer patient satisfaction survey.

V. PROCEDURE:

- A. Treatment Team Planning, Preparation, and Assessment of Readiness for Discharge or Conditional Release
 - 1. The patient’s social worker will initiate a discharge and aftercare plan within 10 days of a patient’s admission. The plan will be developed, updated, and revised as needed until the point of discharge. The plan must include: anticipated discharge date; criteria for discharge; staff member responsible for discharge planning; potential aftercare providers; and referrals for financial assistance, if needed. Refer to policy AD-04 (Discharge and Aftercare Planning) for additional information about discharge and aftercare planning.
 - 2. Social workers will obtain written authorization to release confidential information from the patient or guardian before communicating with others about the discharge or conditional release plans, unless the disclosure or notification is required by law.
 - 3. The LIP, in collaboration with the Treatment Team, patient, guardian, family members, and aftercare providers, will assess the patient’s need for a conditional release or pre-placement visit to promote recovery and safety.
 - 4. The patient’s Treatment Team will assess the patient’s readiness for discharge or conditional release during each treatment progress review meeting, if not more frequently. The treatment, discharge, and aftercare plans will be revised as indicated.

Montana State Hospital Policy and Procedure

DISCHARGE OR CONDITIONAL RELEASE FROM FORENSIC COMMITMENT

Page 5 of 10

5. After weekly treatment team meetings, after treatment progress reviews, or at statutorily determined periods, the patient's LIP will form an opinion about whether the court-ordered examination of a patient (COE, UTP, PSE) is complete. When the examination has been completed, the LIP will ask the patient's social worker to provide notifications and implement the discharge and aftercare plan, following steps C and D of this policy.
 6. After weekly Treatment Team meetings, after treatment progress reviews, or at statutorily determined periods, the patient's LIP will form an opinion about whether patients committed to the hospital for custody, care, and treatment (GBMI, NGMI) meet the statutory criteria for discharge or conditional release.
 7. If the LIP opines that the patient does not meet the criteria for transfer, discharge, or conditional release, they will:
 - a. Document the opinion in the patient's medical record;
 - b. Identify the barriers to transfer, discharge or conditional release;
 - c. Revise the treatment, discharge, and aftercare plans as needed; and
 - d. Reassess the patient's readiness for release at the next progress review meeting.
 8. If the LIP opines that the patient has met the statutory criteria for transfer, discharge, or conditional release, they will:
 - a. Document the opinion in the patient's medical record;
 - b. Request the patient's social worker to finalize the discharge and aftercare plan;
 - c. Develop a FRB Report describing the patient, their treatment progress, current mental status, and proposed discharge and aftercare plan;
 - d. Submit the FRB Report to the FRB for consideration; and
 - e. Request a meeting with the FRB to obtain a second opinion about the conclusions and plans, initiating step B of this policy.
- B. Forensic Review Board Assessment of Readiness for Discharge or Conditional Release
1. FRB review and approval of transfers, discharges, or conditional releases of patient's committed for forensic examination only (COE, UTP, PSE) is not required.
 2. FRB review and approval of transfers, discharges, or conditional releases of patients committed for custody, care, and treatment (GBMI, NGMI) is required.
 3. The FRB will be comprised of five voting members and other participants as indicated to promote thorough review.
 4. The LIP responsible for the patient being considered for transfer, discharge, or conditional release will present the case to the FRB.

Montana State Hospital Policy and Procedure

DISCHARGE OR CONDITIONAL RELEASE FROM FORENSIC COMMITMENT

Page 6 of 10

5. The FRB will have the opportunity to interview and assess the patient being considered for transfer, discharge, or conditional release. The FRB may request additional information or consultation that may be necessary to make a decision.
 6. The FRB will vote on the Treatment Team decisions, conclusions, recommendations, conditional release plans, and discharge plans.
 - a. If the FRB disapproves of the Treatment Teams' decisions, conclusions, recommendations, transfer plan, conditional release plan, or discharge plan the FRB report (Attachment A) will indicate the disapproval and, if appropriate, offer opinions and recommended alternatives.
 - b. If the FRB approves of the Treatment Teams' conclusions and recommendations for transfer, conditional release, or discharge the FRB report (Attachment A) will indicate approval and the Hospital Administrator will request that the Director of the Department of Public Health and Human Services review the conclusions and recommendations, initiating step C of this policy.
- C. Departmental Review, Assessment of Readiness, and Approval of Discharge or Conditional Release Plans
1. The Hospital Administrator will forward the FRB report and any supporting documentation to the Director of the Department of Public Health and Human Services (DPHHS) for consideration and approval.
 2. The treatment team and members of the FRB will be available to answer any questions or concerns the Director has about the conclusions, recommendations, transfer plan, conditional release plan, or discharge plan.
 3. The Director, in consultation with the Office of Legal Affairs (OLA) attorney and others, will decide whether to approve the recommended plans for the patient.
 - a. If the Director disapproves of the recommended transfer, conditional release, or discharge plan the decision will be communicated to the involved parties.
 - b. If the Director approves of the recommended transfer, conditional release, or discharge plan, the OLA attorney will assist the Director in initiating communication, legal petitions, or other actions necessary to accomplish the transfer, conditional release, or discharge. In some cases, this will initiate part D of this policy.
- D. Board of Pardons and Parole Hearings, Court Petitions, and Court Proceedings for Review of Sentence, Transfer, Conditional Release, or Discharge
1. If the approved conditional release or discharge plan involves release through the Board of Pardons and Parole (BOPP), the patient's social worker will arrange for pre-parole education and a parole hearing. The results of the BOPP hearing will be documented in the patient's medical record.

2. If the approved plan involves a petition for a review of sentence or application for conditional release or discharge, the OLA attorney will provide legal services as needed to assist with the implementation of the plan.
 3. Members of the Treatment Team will be available to provide reports and testimony to the Board of Pardons and Parole, court, or other officials as requested or ordered.
 4. If the court disapproves of the Treatment Team's plan for transfer, conditional release, or discharge the OLA attorney will communicate that information, and any recommended alternatives, to the Treatment Team.
 5. If the court approves of the Treatment Team's plan for transfer, conditional release, or discharge, the OLA attorney will communicate that information to the Treatment Team, including any court stipulations. With court approval, the Treatment Team will finalize and implement the plans for transfer, conditional release, or discharge, initiating step E and F of this policy.
- E. Notifications, Agreements, and Warnings Prior to Release from Hospital
1. With court approval of the transfer, conditional release, or discharge plan, the patient's social worker will provide statutory notifications, confirm aftercare resources, and finalize the transfer, discharge, or conditional release plan.
 2. If the patient is being discharged to the Montana Mental Health Nursing Care Center, the social worker will notify the patient, the patient's next of kin, the patient's guardian, and the Mental Disabilities Board of Visitors of the intention to transfer the patient at least 15 days before the transfer (Attachment B – Notification of Intent to Transfer to MMHNCC). If any of the parties object to the transfer they may petition the district court for a hearing to review the discharge/transfer plan. This is a legal requirement (§53-21-414).
 3. If the Treatment Team recommends a conditional release, the patient's social worker will contact the community-based aftercare provider and develop a written agreement for the assumption of responsibility for the patient during the conditional release period. The form (Attachment C – Agreement for Conditional Release) will specify the conditions of release and be signed by the patient and community-based aftercare provider prior to release from the hospital. A copy of the signed agreement will be maintained in the MSH medical record.
 4. If the patient has communicated an actual threat of physical violence by a specific means against a clearly identified or reasonably identified person the LIP, or any other mental health professional with personal knowledge of the threat, will discharge the duty to warn and protect. This is a legal requirement (§27-1-1102). If there is a duty to warn and protect the professional will:

Montana State Hospital Policy and Procedure

DISCHARGE OR CONDITIONAL RELEASE FROM FORENSIC COMMITMENT

Page 8 of 10

- a. Make a reasonable effort to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence, and
 - b. Supply a requesting law enforcement agency with any information the LIP has concerning the threat of violence.
 - c. Document the effort to warn and protect.
5. If the patient was convicted of arson or acquitted of arson on the ground of mental disease or defect, the patient's social worker will provide written notice to the Department of Justice, Arson Bureau, before discharge or conditional release (Attachment D – Notice to Fire Marshall Bureau). The notice will include:
 - a. The name of the person.
 - b. The location where the person is plans to reside
 - c. The type of fire the person was involved in.

This is a legal requirement (§53-1-104).

6. Prior to a transfer, conditional release, or discharge that the patient may find displeasing, the social worker will consult with the treatment team about the most appropriate timing and method of informing the patient of the transfer. The notification of the transfer may be withheld from the patient if that approach is believed to promote safety and reduce the risk of harm to the patient or others.
7. If the transfer, discharge, or conditional release is likely to be pleasing to the patient, the social worker will notify the patient, patient's guardian, and aftercare providers of the Discharge, Aftercare, and Safety Plan. The Plan will be shared with relevant parties as authorized by the patient in order to promote communication, safety, and continuity of care.

F. Implementation of Transfer, Conditional Release, or Discharge

1. With FRB, Departmental, and court approval, the patient's LIP will implement the transfer, conditional release, or discharge by writing an order in the medical record. The order will specify the type of release and specify or refer to conditions the patient must adhere to.
2. The patient's LIP will order recommended medicine for the patient at transfer, conditional release, or discharge. The LIP will consider the risks of the patient possessing medicine at release, the availability of medicines in the community, and the need for prescriptions to help ensure continuity of care. The LIP will consult with the Hospital Administrator about large or very expensive medicine orders.
3. The nurse responding to the LIP's order will educate the patient about their medicine, explain precautions, and clarify instructions. The nurse will complete the medication information in the Discharge, Aftercare, and Safety Plan.

Montana State Hospital Policy and Procedure

DISCHARGE OR CONDITIONAL RELEASE FROM FORENSIC COMMITMENT

Page 9 of 10

4. In order to implement the transfer, conditional release, or discharge, the patient's social worker will:
 - a. Finalize the Discharge, Aftercare, and Safety Plan.
 - b. Review and clarify the Discharge, Aftercare, and Safety Plan with the patient, patient's guardian, and others as authorized or appropriate.
 - c. Finalize any disability, insurance, program eligibility, or public assistance applications.
 - d. Notify the patient of the Brady Bill firearms restriction.
 - e. Notify the patient of any registration laws (violent offender/sexual offender).
 - f. Notify the patient of probationary conditions and facilitate signature of appropriate forms for probation.
 - g. Arrange for appropriate transportation to the patient's destination.
 - h. Arrange for the return of the patient's personal property and money.
 - i. Arrange for medication and prescriptions necessary to provide continuity of care until the patient is under the care of the aftercare provider.
 - j. Verify that the patient has clothing suitable for the season.
 - k. Provide a list of additional community resources that the patient might access after release.

5. If the transfer, conditional release, discharge, or aftercare plans are unusual, the patient's social worker will obtain approval from the Hospital Administrator, or designee, before implementing the plan. This might involve discharge to another state, discharge to a homeless shelter, excessive transportation costs, excessive medicine expense, or similar conditions.

6. In order to assist with the transfer, conditional release, or discharge, and verify aftercare services, the Discharge Technician will:
 - a. Review the Discharge, Aftercare, and Safety Plan.
 - b. Verify that essential elements of the Plan are in place.
 - c. Verify that essential notifications, agreements, and warnings have been made.
 - d. Verify that essential forms are completed and signed.
 - e. Verify that the patient has necessary medicine and prescriptions.
 - f. Administer the Patient Satisfaction Survey.
 - g. Coordinate transportation.
 - h. Offer additional community resources as requested or appropriate.

G. Post Transfer, Conditional Release, or Discharge

1. The LIP will complete a discharge summary within 30 days of the patient's discharge. This is a legal standard (42-CFR-482.24 and 482.43). The discharge summary must include:
 - a. A recapitulation of the patient's hospitalization
 - b. A final diagnosis
 - c. A summary of the patient's condition at discharge

Montana State Hospital Policy and Procedure

DISCHARGE OR CONDITIONAL RELEASE FROM FORENSIC COMMITMENT

Page 10 of 10

- d. Recommended disposition and aftercare services
 - e. Actual disposition and aftercare services
2. The patient's social worker will attempt to contact the patient, patient's guardian, or aftercare provider to assess the quality of the transfer or discharge process and linkage to aftercare services.
- VI. REFERENCES:** Federal standards: 42-CFR 482.43 and 482.24. State standards: §46-14-202-206; 221; 222; 301-304; 311; and 312; 53-21-184; MCA. Memorandum of understanding between the Montana Department of Corrections and Montana Department of Public Health and Human Services (10/29/2007).
- VII. COLLABORATED WITH:** Office of Legal Affairs; Admissions and Discharge Program Manager; Social Work Supervisor; Hospital Administrator; Medical Director; Forensic Psychiatrist, and Clinical Services Director.
- VIII. RESCISSIONS:** None, new policy
- IX. DISTRIBUTION:** All hospital policy manuals.
- X. ANNUAL REVIEW AND AUTHORIZATION:** This policy is subject to annual review and authorization for use by either the Administrator or the Medical Director with written documentation of the review per ARM § 37-106-330.
- XI. FOLLOW-UP RESPONSIBILITY:** Social Work Manager
- XII. ATTACHMENTS:** For internal use only.
- A. FRB Request Report
 - B. Notification of Intent to Transfer to MMHNCC
 - C. Notice to Fire Marshall Bureau
 - D. Agreement for Conditional Release (forensic)

Signature:

John Glueckert
Hospital Administrator

Thomas Gray, M.D.
Medical Director